

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

<p>JAMES BRENT GRUBBS,</p> <p>Plaintiff,</p> <p>v.</p> <p>AMERICAN FINANCIAL CREDIT SERVICES, INC., BLEECKER, BRODEY & ANDREWS, ANDREWS & COX, P.C., RONALD B. BRODEY PROFESSIONAL CORPORATION and ERIC S. JUNGBAUER,</p> <p>Defendants.</p>	<p>CASE NO. 1:13-cv-01936-WTL-MJD</p>
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**SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR AWARD OF
ATTORNEY'S FEES AND COSTS**

Plaintiff James Brent Grubbs, by counsel, as directed by this Court, hereby submits his brief in support of his Motion for Award of Attorney's Fees and Costs (Dkt. 77).

I. INTRODUCTION

Plaintiff prevailed in this FDCPA litigation when the Court granted Plaintiff's motion for summary judgment in part and denied Attorney Defendants' motion for summary judgment in part and Plaintiff received an award of statutory damages. *See* Dkts. 56 and 75. The Court noted Plaintiff was entitled to an award of reasonable attorney fees and costs and ordered Plaintiff to file an appropriate motion. Dkt. 75, p. 7. Plaintiff did so, dkt. 77, and was then ordered to file a supplemental brief. Dkts 79 and 83.

II. DESIGNATION OF EVIDENCE

- A. Affidavit of Robert E. Duff, filed contemporaneously herewith as Exhibit 1;
- B. Affidavit of Judith Fox, filed contemporaneously herewith as Exhibit 2.

III. ARGUMENT

The determination of a reasonable attorney's fee starts with the determination of the lodestar, which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Tolentino v. Friedman*, 46 F.3d 645, 652 (7th Cir. 1995). Plaintiff's attorney has spent, through October 12, 2015, a total of 122.30 hours representing Plaintiff in this matter. Affidavit of Robert E. Duff, ¶ 23. Although Plaintiff believes all of these hours were reasonable and necessary, *id.*, ¶ 24, Plaintiff will defer to his expert, Judith Fox, who has reviewed the time and concluded that only 118.60 hours were reasonable. Affidavit of Judith Fox, ¶ 17. Plaintiff's attorney's hourly rate is \$350 per hour, which is the rate he receives from paying clients in non-fee-shifting representations.¹ Affidavit of Robert E. Duff, ¶¶ 13-17. Expert Fox concluded that \$350 per hour is a reasonable hourly rate for someone with Plaintiff's counsel's experience, and is consistent with what attorneys with similar experience earn in the Southern District

¹ The Seventh Circuit has stated that "[p]aying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." *Tolentino*, 46 F.3d at 653.

of Indiana. Affidavit of Judith Fox, ¶ 15, 18. Therefore, the lodestar in this matter is 118.60 hours multiplied by \$350 for a figure of \$41,510.²

The lodestar figure may then be adjusted by the district court to account for various factors such as “the complexity of the legal issues involved, the degree of success obtained, and the public interest advanced by the litigation.” *Schlacher v. Law Offices of Phillip J. Rotche & Associates, P.C.*, 574 F.3d 852, 856-857 (7th Cir. 2009). For the reasons discussed at length in the Affidavit of Robert E. Duff, Plaintiff does not believe a departure from the lodestar figure is warranted. *See* Affidavit of Robert E. Duff. Further, Expert Fox opines that because this case caused Attorney Defendants to change their practices and cease collecting illegal interest payments, the degree of success was “total” and the lodestar should not be reduced. Affidavit of Judith Fox, ¶ 19. Plaintiff submits the lodestar should therefore not be reduced.

Plaintiff incurred reasonable and necessary costs in this representation of Plaintiff in the amount of \$422.33. Affidavit of Robert E. Duff, ¶ 35; Affidavit of Judith Fox, ¶ 16.

IV. CONCLUSION

The lodestar figure of \$41,510 is a reasonable attorney’s fee in this matter. Costs in the amount of \$422.33 are also reasonable. Accordingly, Plaintiff respectfully requests an award of reasonable fees and costs of \$41,932.33.³

² Expert Fox miscalculates the lodestar as \$42,805.00, which is \$350 times 122.30 hours instead of 118.60 hours.

³ Plaintiff has incurred additional time after October 12, 2015 and will continue to incur additional time prosecuting this fee petition. Reasonable time spent recovering fees is compensable. *See Young v. Accounts Recovery Bureau, Inc.*, 2012 WL 3764014 *1 n. 3 (S.D.Ind. August 8, 2012). Accordingly, Plaintiff will supplement this brief when appropriate.

Respectfully submitted,

s/Robert E. Duff

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Certificate of Service

The undersigned counsel for Plaintiff hereby certifies that on October 20, 2015 I electronically filed the foregoing document with the Clerk of Court using the Court's CM/ECF system, which sent notification of the filing to all counsel of record.

s/Robert E. Duff

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